IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.13454 of 1993

Between:

1 R.Satyanarayana, S/o. Subba Rao, PDM Court,
Mangalagri, Guntur District.
2 P.Sankaranarayana, S/o. Venkateswara Rao,
Addl.Sub Court, Guntur District.
3 D.Koteswara rao, S/o. Pullaiah,
I Addl.District Judges Court, Guntur District.
4 K.Haragopal, S/o. Gurulinga Chari,
III Addl. District Judges Court, Guntur.
5 T.Anjaneyulu, S/o. Venkata Subbaiah,
Munsif Magistrate's Court, Chilakaluripet,
Guntur District.
6 G.Ramamohan Rao, S/o. Venkaiah,
Munsif Magistrates Court, Ponnur,
Guntur District.
7 G.S.T.Sai, S/o. Ramakrishna Rao,
District Munsiff's Court, Guntur.

.....PETITIONERS

AND

1 State of Andhra Pradesh Rep., by its Chief Secretary,

Secretariat Buildings, Hyderabad.
2 The Registrar of High Court of A.P., Hyderabad.
3 The District & Sessions Judge, Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, or order or directions specifically in the nature of Writ of Mandamus directing the 2nd and 3rd respondents to fix up the seniority of the petitioners in Category 5 from the date of promotion as L.D.C. i.e. Category 5 by setting aside the impugned order of the 2nd respondent in ROC.No. 1139/87/C.SPL. Dated 14.3.89 and ROC.No.1883/89-C1 14.2.90 as illegal arbitrary, contrary to the A.P.J.M.S. Rules and violative of Articles 14 & 16 of the Constitution of India.

Counsel for the Petitioner : Mr.B.KRISHNA MOHAN

Counsel for the Respondent No.1: GP FOR HOME

Counsel for Respondents 2 and 3 : Smt. M.Bhaskara Lakshmi

The Court made the following :

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JUDGMENT: (per CVR,J)

According to the petitioners, they are all working as Lower Division Clerks (LDCs) in the Judicial Department under the 3rd respondent-unit. They were originally appointed as Examiners in

Category 6 of Division IV of the Andhra Pradesh Judicial Ministerial Service Rules (for short 'APJMS Rules') and later promoted as LDCs in Category 5 of Division IV. While so, the 3rd respondent issued Proceedings dated 31-1-1982, which was subsequently amended in two separate Proceedings dated 2-3-1982 regularizing temporary services of the employees working as LDCs, Steno-typists and Typists in the District, who are promotees from the lower category with effect from 18-9-1978. Petitioners are aggrieved as to fixation of their seniority in Category 5 on the basis of the date of first appointment in the lower post. It is their plea that they were promoted to the higher category and they are seniors in category 5, but their seniority was deprived. In fixing seniority in a particular category, relevant date is only the date of appointment in that category, but not date of appointment in lower post. Even if their promotion was temporary in nature, they are entitled for reckoning their seniority in the promoted post from the date of first promotion to that category. Whereas, in their case, seniority was not fixed, in the present cadre, as per their date of promotion to the post, but was reckoned on the basis of their first appointment in the lower category. Thus, though they were promoted much prior to many of their seniors in the lower category, they were not given their respective seniority in the cadre of LDC making their juniors to march over them in the seniority as well as for future promotion. Aggrieved by the same, petitioner No.1 had filed a representation before the 2nd respondent, which was dismissed on 14-2-1990 as under:

"After consideration of the representation of Sri R.Satyanarayana first read above, and the remarks of the District Judge, Guntur second read above, the High Court holds that the word 'promoted' in Rule 27-A of the A.P.Judicial Ministerial Service Rules excludes persons promoted temporarily or fortuitously and that, therefore, the representation of Sri R.Satyanarayana is liable to be dismissed.

The connected record sent in the matter is returned herewith and receipt of the same may be acknowledged."

Petitioners 2 to 4 and others filed revisions before the 2nd respondent, which were dismissed on 14-3-1989 as follows:

"After consideration of the Revisions of S/Sri T.Ankarao and 6 others 3rd to 9th read above, the order and letters of the District Judge, Guntur, 1st, 2nd, 10th and 11th read above and also all other connected record, the High Court holds that the word 'Promoted' in Rule 27-A of the A.P. Judicial Ministerial Service Rules excludes persons promoted temporarily or fortuitously and that, therefore, the revisions of S/Sri T.Ankarao and 6 others 3rd to 9th read above are liable to be dismissed.

Accordingly, the revisions of S/Sri T.Ankarao, 2) D.Koteswara Rao, 3) P.Sankaranarayana, 4) K.Haragopal, 5) A.Lakshmipathi Rao, 6) K.V.Krishna Sarma and 7) D.V.Ramana Rao, are hereby dismissed."

Aggrieved by the said orders, the present writ petition is filed seeking a Writ of Mandamus directing respondents 2 and 3 to fix up the seniority of petitioners in Category 5 from the date of promotion as LDC i.e. Category 5 by setting aside the above orders.

On behalf of the 2nd respondent, a detailed counter affidavit has been filed stating that the High Court, on administrative side, as early as in 1975 issued a Circular to all the District Judges directing them to take seniority of the individuals in the lower category into consideration while making temporary promotions to the posts of LDCs, Steno-typists and Typists. However, the services of petitioners have been regularized with effect from 18-3-1978 as per G.O.Ms.No.450, dated 18-7-1981 and their seniority in the above category was fixed from the date of their first appointment in their respective categories as per the Proceedings dated 31-1-1982 of the 3rd respondent. This procedure was followed as per the guidelines laid down by the High Court in its Circular Roc.No.1814/75(C-1), dated 26-4-1975 and that Rule 27A of APJMS Rules has no application to petitioners, since their promotion was purely on temporary basis due to exigency of service and they were appointed against

vacancies meant for direct recruits and they were liable to be reverted to the lower post whenever direct recruitment had taken place. It was found that appointments by promotion or transfer in the first instance made under Rule 40 of APJMS Rules probably due to administrative exigency, without following the rule of seniority of members in the lower category considered for promotion or appointment by transfer. While it may not be against the rules to make such temporary promotions or appointments without reference to seniority of members in the lower categories, it is not in accordance with the rules to make regular appointment later, on the basis of such temporary initial appointment. Therefore, the regularization of temporary services of petitioners in the promoted post from the date of their respective appointments to Category 5 does not arise. Respondent No.3, appointing authority, has fixed 18-9-1978 as the date from which temporary services of the promotees should be regularized. Therefore, the High Court, on administrative side, by Proceedings dated 14-3-1989 and 14-2-1990 dismissed the revisions filed by petitioners holding that the word 'promoted' in Rule 27-A of APJMS Rules excludes persons promoted temporarily or fortuitously. All the petitioners were promoted temporarily or fortuitously; therefore, they are not entitled for reckoning their temporary service rendered in the promoted post for the purpose of seniority in category 5.

Heard both sides.

Here, at the outset, it may be necessary to examine Rules 27-A, 34 and 40 of the APJMS Rules, which read as under:

> "**Rule 27-A. Special Provision in respect of probation and seniority in certain cases**:-- Notwithstanding anything contained in these rules, a person promoted or appointed by transfer on or after the 23rd January,1969 to a division, category or grade of the service, shall be deemed to have commenced his probation in that division, category or grade from the date on which he has been continuously on duty in that division, category or grade for a period of not less than two months from the date of promotion or appointment by transfer.

> **Rule 34. Seniority:-** (1) The seniority of a person in a division, category or grade of the service shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such division, category or grade. If any portion of the service of such person does not count towards probation under Rule 16(4) or 40(4), his seniority shall be determined by the date of commencement of his service, which counts towards probation. This sub-rule shall be deemed to have been in force on and from the 26th May,1938, but shall not affect the seniority of any member of the service, which may have been fixed expressly or by implication before the 19th November,1941; or any orders as to seniority which may have been passed by competent authority before the 19th November,1941.

(2) The appointing authority, may, at the time of passing an order of appointing two or more persons simultaneously to a division, category or grade of the service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason, the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it.

(3) The transfer of a person from one division or category to another division or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority; and the seniority of a person so transferred shall be determined with reference to the date of his first appointment to the division or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority."

Rule 40. Temporary promotion:- (1) (i) Where it is necessary in public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in any division of the service by promotion from a lower category and there would be undue delay in making such promotion in accordance with these rules, the appointing authority may promote a person, otherwise than in accordance with these rules ; temporarily, until a person is promoted in accordance with these rules.

(ii) No person who does not possess the qualifications prescribed for the post shall ordinarily be promoted under clause (i). Every person who does not possession such qualifications and who has been or is promoted under clause (i) shall be replaced as soon as possible by promoting a person possessing such qualifications.

(2) Where it is necessary to fill a short vacancy in a post borne on the cadre of a higher category in any division of the service by promotion from a lower category and the appointment of the person who is entitled to such promotion under these rules would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the appointing authority may promote any other person, who possesses the qualification, if any, prescribed for the higher category.

(3) A person promoted under clause (i) of sub-rule (1) shall, whether or not possess the qualification prescribed for the post to which he is promoted, be replaced as soon as possible by the member of the service who is entitled to promotion under these rules.

(4) A person promoted under sub-rule (1) or (2) shall not be regarded as a probationer in the higher category or be entitled by reason only of such promotion to any preferential claim to future promotion to such higher category.

If such person is subsequently promoted to the higher category in accordance with these rules, he shall commence his probation, if any, in such category from the date of such subsequent promotion or from such earlier date as the appointing authority may determine.

(5) .....

(6).....”

From Rule 27A of APJMS Rules, it is clear that even if temporary service is rendered in a particular category, an employee is entitled to reckon the same in that particular category. Further, Rule 34 of APJMS Rules contemplates reckoning of seniority of employees in judicial service from the date of first appointment, whether it is temporary or *ad hoc.* Therefore, the impugned Proceedings stating that Rule 27-A of APJMS Rules is not applicable to the persons, who are promoted temporarily or fortuitously is nothing but denial of legitimate right of petitioners to reckon service rendered by them in their respective categories. Learned Standing Counsel for High Court also brought to the notice of this Court, the Circular issued by the 2nd respondent in Rc.No.1814/75/C1, dated 26-4-1975 to justify the impugned proceedings. The said circular even assuming, is applicable to the case of petitioners, it is not the case of respondents 2 and 3 that the petitioners were promoted irregularly or they were not qualified to hold the said post or their promotions were made on temporary basis without looking into their seniority in the lower cadre or such promotions were made denying promotions to other eligible candidates. The only contention of respondents 2 and 3 is that promotion of petitioners was temporary and as such, they are not entitled for the benefit of Rule 27-A of APJMS Rules read with Rules 34 and 40 of APJMS Rules. Rule 27-A of the Rules contains a non-obstante clause and it was introduced into the Act by way of an amendment as a special provision with effect from 29-6-1982. Under this Rule, once an employee completes two months of service from the date of promotion or appointment by transfer, he is entitled to reckon the said service for the purpose of probation in that particular category. Therefore, even if there is any such circular in existence, it cannot have any overriding effect on the rules applicable to the service conditions of petitioners. It is the basic principle that a person is entitled to reckon the service rendered by him in a particular category from the date of his initial promotion or appointment for the purpose of seniority, unless there was any gap in service in that particular category. The course adopted by respondents in denying the seniority of petitioners in the category of LDC in the guise of circular dated 26-4-1975 is arbitrary and illegal. Therefore, the impugned orders are liable to be set aside.

During the course of arguments, though it was not raised in the counter affidavit, learned standing counsel for High Court raised an important question as to granting of relief to petitioners in the absence of affected parties being impleaded to these

proceedings, in case the Court comes to the conclusion that the course of action adopted by respondents was arbitrary and illegal. In this regard, the learned counsel for petitioners relied upon the decisions of the apex Court in **A. JANARDHANA v. UNION OF INDIA, DIRECT RECRUIT CLASS II ENGG. OFFICERS' ASSOCIATION v. STATE OF MAHARASHTRA** and **RAJBIR SINGH v. UNION OF INDIA** and submitted that there is no necessity of making the affected persons parties to this proceedings.

In **JANARDHANA**'s case (1 supra), it was held as under:

> "36.....Therefore, the case of direct recruits has not gone unrepresented and the contention can be negatived on this short ground. However, there is a more cogent reason why we would not countenance this contention. **In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual**. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to General Manager, South Central Rly., Secundrabad v. A. V R. Sidhanti (1974) 3 SCR 207 at p. 212: (AIR 1974 SC 1755 at P. 1759). Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, **this Court observed that the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating to seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and, therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negatived** (emphasis supplied).

In **DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION** case (2 supra), the Apex Court held as follows:

> "Where appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly. But if it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down. Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date."

In **RAJBIR SINGH**'s case (3 supra), it was held by the Supreme Court as under:

> "2. It is well settled by several decisions of this Court that an appointment against a purely temporary ad hoc or fortuitous post does not entitle the holder of the post to be a member of the service and as such, such fortuitous or ad hoc appointment does not entitle the holder of the post to get the benefit of the period of such ad hoc or fortuitous service. **Nevertheless, if a person is appointed against a substantive vacancy and is subsequently promoted to continue on ad hoc basis to hold such posts for a number of years, then, in that case the appointment though made on ad hoc basis has to be taken into consideration in reckoning the seniority of the holder on that basis**. In the instant case, there is no whisper on the part of the Railway Authorities that the appellants who are already member of the service by being appointed in class IV posts since 1971 and subsequently promoted in 1975 on ad hoc basis after holding regular tests and finding them qualified to be promoted and has actually been regularised and promoted in class III service and their services were subsequently regularised in the said posts in 1986. **In such circumstances, it cannot be said that such ad hoc service for a period of about 11 years will not be taken into account in determining the seniority of the holders of the class 111 post, i.e. the appellants.** It has also been clearly averred that in similar circumstances some of the juniors of the appellants who had been given seniority from the date of regularisation and were allowed the benefit for the period of ad hoc promotion.……
>
> 3. Considering all these facts and circumstances and also considering the well-settled decisions of this Court we are constraint to hold that the period of 11 years of ad hoc service has to be taken into consideration in determining the seniority of these appellants. The decisions in Ashok Gulati's case, (AIR 1987 SC 424) referred to herebefore has no semblance of application to this case as the facts of that case are totally different from the facts of this case. It has been tried to be contended before us by the learned counsel appearing on behalf of the respondent that since the employees who are likely to be affected by this judgment has not been impleaded, the relief should not be granted until and unless they are impleaded in this case. **We are unable to find any merit of this submission for the simple reason that the question of law involved in this case whether a person appointed on a officiating basis to a substantive vacancy and working there for a considerable period of years is entitled to have his period of ad hoc service to be reckoned while being regularised in the promoted posts** (emphasis supplied)."

Learned standing counsel for High Court contends that in the case relied upon by petitioners in **A.JANARDHANA**'s case (1 supra) the Rule was under challenge and as such, the Apex Court held that there was no necessity of the affected parties being impleaded to the proceedings. In this regard, she further relied upon the decisions reported in **GENERAL MANAGER, S.C. RAILWAY v. SIDDHANTTI** in which it was observed as under:

> "15. As regards the second objection, it is to be noted that the decision of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain-Shop departments. The Respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to these in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No. list or order fixing seniority of the petitioners vis-a-vis particular

individuals, pursuant to the impugned decisions, is being challenged. **The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952, were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition** (emphasis supplied)**.**

16. The ratio of this Court's decision in Padam Singh Jhina's case, Civil Appeal No. 405 of 1967, D/-14-8-1967 (SC) (supra) is not applicable to the facts of the instant case. Jhina's contention was that he had been mala fide reduced in the list of seniority, from the 5th to the 7th place and that one Prem Sagar had been placed above him in contravention of the Rules. **The validity or vires of the Rules was not in question. All the persons whose placement in the seniority list was controverted were not impleaded, and as such, had no opportunity of replying to the case set up by Jhina, and, in the absence of persons directly affected, it was not possible for the Court to adjudicate the matter**. The ratio of Jhina's case does not help the appellant. The cases relevant for our purpose are B. Gopalaiah v. Govt. of Andhra Pradesh, AIR 1969 Andh Pra 204 : J. S. Sachdev v. Reserve Bank of Indian New Delhi, ILR (1973) 2 Delhi 392 and Mohan Chandra Joshi v. Union of India, Civil Writ No. 550 of 1970 (Delhi). We approve of the rule enunciated on this point in those cases (emphasis supplied)."

She has also drawn attention of the Court to another decision of the Apex Court in **UNION OF INDIA v. M.P. SINGH** in which it was held as under:

"10. Two other objections one about delay and other about non-joinder raised, again, by Union Govt. may be examined. As regards former suffice it to say that the occasion to approach Tribunal arose when seniority of respondents was disturbed and panels recommended in 1972 and 1979 were redrawn in 1987 and seniority were refixed in Group 'B' with effect from March 1968. Therefore objection of claim being late or belated cannot be accepted. Nor there is any substance in defect due to non-joinder of parties. **Objection stands answered by the ratio in Col. D. D. Joshi v. Union of India (1983) 2 SCC 235: (AIR 1983 SC 420) where it was held that it was not necessary to implead all parties if challenge was to validity of rule. As regards Ranga Reddy v. State of Andhra Pradesh 1987 Supp. SCC 15 relied on behalf of the appellant in support of the submission that the order passed by the Tribunal was vitiated in the absence of interested parties cannot be accepted as some of those officers who were directly affected or were immediately likely to be affected got themselves impleaded before the Tribunal.** Therefore, the defect, if any, stood removed. Moreover the Tribunal protected interests of all these persons who were working at present by directing that they shall not be disturbed. Non-impleadment of these who may be affected in future could not render the petition vulnerable (emphasis supplied)."

and submitted that in the instant case, petitioners have not made any challenge to Rule 27A or any other Rules of APJMS Rules by which they are governed. Petitioners only contended that the application of the Circular issued by the High Court and the orders passed by respondents 2 and 3 were not correct. Once this is so, the affected parties must be impleaded to this proceedings to have their say, otherwise, petitioners are not entitled for any relief. In the recent judgment in **STATE OF BIHAR v. KAMESHWAR PRASAD SINGH**, the apex Court held as under:

"26. It appears that the High Court totally lost sight of the fact that in his petitions filed from time to time Brij Bihari Prasad Singh had not impleaded any of his seniors as party-

> respondents. In the absence of persons likely to be affected by the relief prayed for, the writ petitions should have normally been dismissed unless there existed specific reasons for non-impleadment of the affected persons. Neither any reason was assigned by the writ petitioner nor the Court felt it necessary to deal with this aspect of the matter. Ignoring such a basic principle of law has resulted in the supersession of 168 Inspectors and 407 Dy. SPs. The writ petition filed Brij Bihari Prasad Singh being totally misconceived, devoid of any legal force and prayers made being in contravention of the rules applicable in the case deserved dismissal, which was unfortunately not done with the result that the interests of many seniors have been threatened, endangered and adversely affected. The appeal of the State has, therefore, to be allowed by setting aside the impugned judgment."

It is true that petitioners have not questioned validity of Rule 27-A or any other rule. The case of petitioners is that Rule 27-A was not properly applied in their case and they sought refixation of their seniority as per the said Rule. In view of the decisions relied upon by the learned counsel for the respondents, we are of the considered opinion that the impleadment of affected parties is necessary for giving a positive direction by this Court.

Nonetheless in view of the above legal position, the seniority of petitioners needs to be reconsidered as per Rule 27-A of APJMS Rules. However, this shall be done only after affording opportunity to the affected parties without reference to the Circular dated 26-4-1975 issued by the High Court on administrative side.

Accordingly, the Writ Petition is disposed of. No order as to costs.

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(**DEVINDER GUPTA, CJ**)

23rd August, 2004

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(**C.V. RAMULU,J**)

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. State of Andhra Pradesh Rep., by its Chief Secretary,

Secretariat Buildings, Hyderabad.
2. The Registrar of High Court of A.P., Hyderabad.
3. The District & Sessions Judge, Guntur.

4. 2CCs to Govt.Pleader for Home, High Court Buildings, Hyderabad (o.u.t.)

5. 2CD copies